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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 Francisco Berlanga, et al.,

12 Plaintiffs,

13 v.

14 Polaris Industries, Inc., et al.,

15 Defendants.
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No. 2:21-cv-00949-KJM-DMC

ORDER

17 The parties jointly request an order sealing five documents in connection with an
18 anticipated motion for class certification. *See* Revised Req., ECF No. 76; Mem. (submitted for *in*
19 *camera* review).

20 The legal standard for requests to seal depends on whether the request is tied to a
21 “dispositive” motion, i.e., a motion that is “more than tangentially related to the merits of a case.”
22 *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). District courts
23 within the Ninth Circuit disagree whether a motion to certify a class is “dispositive” in this sense.
24 *See, e.g., In re Seagate Tech. LLC*, 326 F.R.D. 223, 246 (N.D. Cal. 2018) (collecting conflicting
25 authority). This court has decided class certification motions are “dispositive” and stands by that
26 decision now. *See, e.g., Prev. Order*, ECF No. 75. Motions for class certification may end the
27 litigation for all practical purposes, *see e.g., Seagate*, 326 F.R.D. at 246, and “[t]he class
28 determination generally involves considerations that are enmeshed in the factual and legal issues

1 comprising the plaintiff's cause of action.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351
2 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982)).

3 Because the pending request to seal is tied to a “dispositive” motion, it can be granted
4 only if the parties offer “a compelling reason” to keep the information in question from the
5 public. *Center for Auto Safety*, 809 F.3d at 1096–97 (quoting *Kamakana v. City & County of*
6 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)). To decide whether the party requesting a seal
7 has carried that burden, the court balances the reasons for secrecy with the public’s interests in
8 disclosure. *See Kamakana*, 447 F.3d at 1179. If a court decides to grant a request to seal, it must
9 explain its reasons and may not rely on “hypothesis or conjecture.” *Id.* (quoting *Hagestad v.*
10 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). In light of the strong presumption in favor of
11 access to court records, and given the frequency and overbreadth of many motions to seal, federal
12 courts deny motions to seal that merely cite “a general category of privilege.” *See id.* at 1184. A
13 party that wishes to keep its documents secret must point out a “specific linkage” between its
14 interests in secrecy and those documents. *See id.* “[C]onclusory offerings do not rise to the level
15 of ‘compelling reasons’ sufficiently specific to bar the public access to the documents.” *Id.* at
16 1182.

17 The parties’ amended joint request to seal in this case is narrower than their original
18 request. They ask to redact or seal only five documents, rather than the twenty-eight listed in
19 their original request. *See* Prev. Order at 3. They have also gone further than the broad assertions
20 of confidentiality that led this court to deny their original request. *See id.* at 3–4. But the
21 documents they request to seal still are more than three hundred pages long, and their amended
22 request remains generic. They assert broad interests in the secrecy of “market research regarding
23 consumer preferences,” “proprietary strategic objectives regarding product development and
24 testing,” and “calculations of costs and reimbursement rates” for a product recall. Revised Req.
25 at 3 (submitted for review *in camera*). The separate reasons they offer for each of the five listed
26 documents are similarly vague and often identical. *Compare, e.g., id.* at 4 (“Reflects confidential
27 information related to Polaris proprietary market research regarding consumer preferences for
28 ROPS and vehicle accessories, which reflects Polaris’s strategic objectives regarding marketing

1 and consumer outreach”), *with, e.g., id.* at 5 (“Reflects confidential information related to Polaris
2 proprietary market research regarding consumer preferences for ROPS and vehicle accessories,
3 which reflects Polaris’s strategic objectives regarding marketing and consumer outreach.”).

4 One example in particular suffices to explain the court’s concerns concretely. The parties
5 ask to seal an April 2018 presentation of consumer survey responses. It is unclear why a five-
6 year-old presentation would risk competitive harm today. Setting aside the presentation’s age, the
7 parties have not explained why all of the information in the presentation should be concealed.
8 One page, for example, reports the commonsense conclusion that some people decide not to
9 replace specific vehicle components because the replacement is not worth the money. The
10 presentation also includes dozens of charts and tables, but for all of these charts and tables, the
11 parties offer a single generic explanation: the information is “related to” market research and
12 “reflects Polaris strategic objectives.” These reasons are not “compelling.” They also do not
13 reflect any consideration by the parties of the possible narrowed option of redaction of only truly
14 confidential information, if any qualifies.

15 The renewed joint request to file under seal (ECF No. 75) is **denied**.

16 IT IS SO ORDERED.

17 DATED: April 27, 2023.

18 
CHIEF UNITED STATES DISTRICT JUDGE